

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	

**COMMENTS OF  
OREGON-IDAHO UTILITIES  
AND HUMBOLDT TELEPHONE COMPANY  
ON ETC DESIGNATION ISSUES**

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**COMMENTS OF  
OREGON-IDAHO UTILITIES AND HUMBOLDT TELEPHONE COMPANY**

Oregon-Idaho Utilities, Inc. (OIU) and Humboldt Telephone Company (HTC) respectfully submit these Comments in response to the Commission's Notice of Proposed Rulemaking (NPRM) in the captioned docket, which solicited comments from interested parties on the February 27, 2004, *Recommended Decision* of the Federal-State Joint Board on Universal Service, FCC 04J-1.

**I. INTRODUCTION.**

OIU and HTC are small, rural Incumbent Local Exchange Carriers (ILECS) serving contiguous study areas in the states of Oregon, Idaho, and Nevada. OIU and HTC are under common, family ownership. Their two study areas, taken together, include over 10,000 square miles -- an area twice the size of the State of Connecticut. Within this vast area, OIU and HTC serve a total of approximately 1,800 access lines.

Their remote and mountainous service territory causes OIU and HTC to be among the highest-cost study areas in the country. Within this extremely-rural service territory, OIU and HTC have constructed facilities that provide their customers with urban-quality local exchange service, along with high-speed data service that enables the local schools and other governmental agencies to participate in county-wide and state-wide networks. The facilities which OIU and HTC have built to serve this remote area are costly on a "per-customer" basis, but, as a result of economical construction, the facilities are not particularly high in cost on a "per-mile" or "per-square-mile" basis.

As high-cost, rural local exchange service providers, OIU and HTC are dependent upon

federal and state sources of universal service support for the revenues required to provide service and to maintain and improve their service facilities as customer, network, and government requirements evolve.

OIU and HTC have addressed universal service policy issues in comments previously filed with the Commission, both individually and as participants in national and regional associations and *ad hoc* groups of small companies. With respect to this NPRM, OIU and HTC will again be represented before the Commission by Comments filed by national and regional associations advocating on behalf of rural local exchange companies. These other Comments will fully address the complete range of issues raised by the *Recommended Decision*, and OIU and HTC will not undertake to repeat or duplicate that discussion of issues. These Comments will, instead, focus primarily on recent state proceedings involving applications by wireless service providers for designation as ETCs in the service territories of OIU and HTC.

## **II. THE ETC DESIGNATION PROCESS.**

Within the past 12 months, both OIU and HTC have been subject to ETC designation proceedings filed with their State Commissions. In the case of OIU, RCC Minnesota, d/b/a Cellular One and US Cellular Corporation filed applications with the Oregon Public Utility Commission for ETC designation in the service territories of several rural ILECS, including OIU. In the case of HTC, Western Wireless, d/b/a Cellular One, filed an application with the Nevada Public Utilities Commission for ETC designation in the service area of four ILECS, including HTC.

In each of these state proceedings, the original applications were replete with error concerning the actual areas where wireless service was being provided as well as the service area

boundaries of OIU and HTC. It required substantial (and costly) discovery and effort by OIU and HTC to establish the correct facts concerning the relation between wireless service areas (facts well within the knowledge of the applicants when they filed the applications) and the exchange boundaries of OIU and HTC (facts in the public record, in the form of precise tariff maps filed with the State Commissions).

In the case of OIU, when the facts of service area boundaries were finally made clear to the applicants, they dismissed OIU from the Oregon proceedings due to lack of signal coverage-- a *de facto* acknowledgment that the RCC Minnesota and US Cellular applications should not have included OIU in the first place. In the case of Western Wireless, there was some clarification in the form of an amendment to the application acknowledging that Western Wireless did not serve all of HTC's exchanges, but the issue of Western Wireless' service area was still being contested at the evidentiary hearings on the application.

This experience of OIU and HTC demonstrates the necessity of the Joint Board's proposal for "fact-intensive" proceedings, commencing with the filing of an ETC application. In each of the OIU and HTC proceedings, the applicants used a "scattergun" approach to define the areas where ETC designation was being sought. The requests were based on broad-scale maps generated by inaccurate databases that lacked sufficient detail. The applicants took the position that the problem lay with OIU and HTC, which had not provided the applicants with digital maps of their ILEC service areas, despite that (1) there had been no request for service area maps prior to filing the applications and (2) detailed, accurate local exchange maps for both OIU and HTC were available as public documents at the respective state commissions.

OIU and HTC believe that their experience of being drawn into ETC designation

proceedings based on sloppy, erroneous data is not unique. ETC designation applications are often filed without accurate information on where the ILEC and the wireless applicant actually serve. Similarly, service quality information (*i.e.*, the areas within the CMRS licensing contour within which actual signal coverage is available) is almost never provided. Meaningful “fact-intensive” filing requirements are needed. As recommended by the Joint Board, these requirements must include specific plans to build facilities where signal coverage is inadequate, again an issue that should be required to be addressed *in the application*, since the applicant has all of the information needed on this subject prior to filing of the application.

On August 4, 2004, the Nevada Commission ruled in favor of HTC and denied the Western Wireless application for ETC status in the HTC service area.<sup>1</sup> The text of the Nevada Commission’s Order in Docket No. 04-3030 has not yet been released, but based upon the Draft Order and the discussion at the Commission’s August 4, 2004, Agenda Meeting, the reasons for denial of the Western Wireless application can be determined. The Nevada Commission applied a fact-intensive, “rigorous and stringent” public interest analysis to the Western Wireless application, concluding:

Therefore, the Commission finds that designating Western Wireless as an ETC in the requested wire centers potentially could undermine Humboldt’s ability to serve its entire study area. Again, this is a significant concern because Humboldt is a Provider of Last Resort, and placing it in a competitively disadvantageous position could impede fulfillment of its obligations and, consequently, affect consumers and universal service in Nevada. Consequently, the request to redefine Humboldt’s service area is denied, and as a result, the request for ETC designation in this service area is also denied.

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<sup>1</sup>The Nevada Commission’s Order also denied Western Wireless’ application with respect to the service area of another rural ILEC, Lincoln County Telephone System, Inc.

In reaching its decision to deny the Western Wireless ETC designation application, the Nevada Commission relied in part on the FCC's *Virginia Cellular* and *Highland Cellular* decisions, concurring with the finding in those decisions that a public interest evaluation had to go beyond a showing of the "benefits of competition." Citing *Virginia Cellular*, the Nevada Commission found:

Although the potential benefits of competition are one factor to be considered, other considerations include the impact of multiple ETC designations on the universal service fund, the unique advantages and disadvantages of the competitor's service offering, commitments regarding service quality, and the competitive ETC's ability to provide supported services throughout the designated service area within a reasonable period.

The Nevada Commission's decision denying the Western Wireless application for ETC designation in HTC's service area stands as an example of how the public interest can and should be determined in the ETC designation process. The Joint Board's recommendations on ETC designation standards propose a similar approach. The Commission should consider the Joint Board's recommendations, along with the comments of interested parties, and should adopt specific minimum standards that would advance universal service while protecting the public interest.

### **III. OTHER FACTORS AFFECTING FUND GROWTH.**

The adoption of specific minimum ETC designation standards would promote the public interest in limiting universal service expenditures to circumstances where the public benefit is commensurate with the public cost. This would assist in limiting the growth of universal service funds, although other requirements affecting fund growth also need to be addressed. OIU and HTC will not address these other factors in detail, since they will be addressed in the comments

that national and regional organizations are filing on behalf of OIU and HTC, but the following discussion will briefly address these issues.

The Joint Board's proposal to limit funding to a "primary line" should be rejected for several reasons. (1) It is administratively "unworkable." It will not be possible to determine a "single" connection to a particular location when one provider is a wireline carrier and the other a provider of portable wireless service, "locating" its customers by a billing address. (2) The primary line limitation does not correspond with underlying economic considerations, since facilities costs are not incurred one line at a time. For this reason it would discourage investment in the very facilities that are supposed to be *supported* by the universal service program. It would, further, invite "disuse" of existing facilities which are capable of providing rural customers with the same multiple-line service available to urban customers, by pricing second lines at unaffordable levels. (3) The proposal is discriminatory in suggesting that customers of rural, high-cost companies are not entitled to additional lines that are available at the same rates as primary lines to customers of urban carriers and to rural customers of large LECS which serve both urban and rural areas. For this reason, the proposal would violate the universal service principles in section 254 of the Telecommunications Act of 1996, which mandate that rural customers be able to receive services and rates that are "comparable" to those available in urban areas.

The issue of controlling fund size can best be addressed by eliminating the current practice of providing wireless ETCs with support based on the funding requirements of the underlying wireline service provider. This current policy is providing wireless carriers with excessive, windfall revenues and literally wasting hundreds of millions of universal service

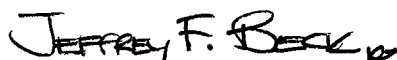
support dollars annually. Wireline and wireless services are different. They operate under different regulatory standards and requirements, and cost structures. There is no reason that a wireless ETC should receive universal service funding that exceeds its costs of providing service. Instead, the Commission should limit wireless ETC funding to the actual costs incurred by the wireless carrier, which should be determined in the ETC designation process, as a component of the public interest determination.

#### **IV. CONCLUSION.**

OIU and HTC believe that their recent experience with the ETC designation process provides support for the Joint Board's proposals for the adoption of clear and rigorous public interest standards. The decision of the Nevada Commission to deny the request of Western Wireless for ETC status in Humboldt's service area is an example of the proper application of public interest standards in this area. OIU and Humboldt appreciate this opportunity to discuss these important issues in these comments.

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Respectfully Submitted,



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